

**Remarks:**

**Status of Claims**

Claims 28-40, 42-52, and 55-61 were previously pending. By way of this Amendment, claims 28 and 46 are amended, claims 37-40, 42-45, 57-59, and 61 are canceled, and claim 62 is newly added. Thus, claims 28-36, 46-52, 55-56, 60, and 62 are pending with claims 28 and 46 being independent.

**Office Action**

In the March 16, 2007, Office action, the Examiner rejected claims 28-40, 42-52, and 55-61 under 35 U.S.C. 102(e) as being anticipated by Faure (U.S. Patent No. 6,470,641) and rejected claims 28-30, 36, and 61 under 35 U.S.C. 102(b) as being anticipated by West (U.S. Patent No. 6,314,699).

**Independent Claim 46**

Independent claim 46, a method claim, has been amended herein to recite that “the second fastener [is] rigidly attached to the first support member **after** the second fastener is positioned against the first board.” As shown in FIG. 1 and discussed on page 7, lines 19-30, of the specification, the configuration of the boards and fasteners of various embodiments of the present invention enables the boards and fasteners to be installed in a generally simultaneous fashion such that it is not necessary to measure and install the fasteners (and associated fastening elements) before the boards are laid down.

In contrast to this claimed feature, Faure requires an installer to first identify where all the fasteners should be placed and then partially install the fasteners **before** any boards are positioned. As should be appreciated, the tedious process disclosed by Faure of precisely measuring the expected location of fasteners greatly complicates the installation process and increases the time required to install a decking surface. The installation sequence required by Faure is illustrated in FIGS. 6-11. FIGS. 7, 8, and 11 are reproduced below for the Examiner’s reference:

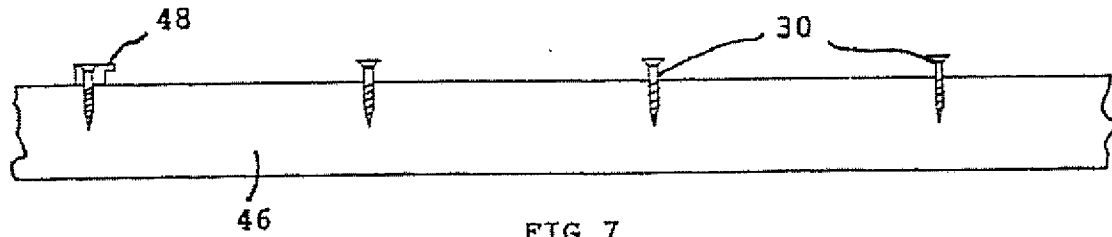


FIG 7

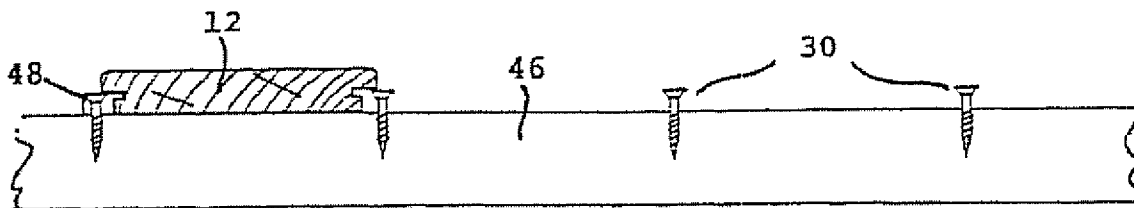


FIG 8

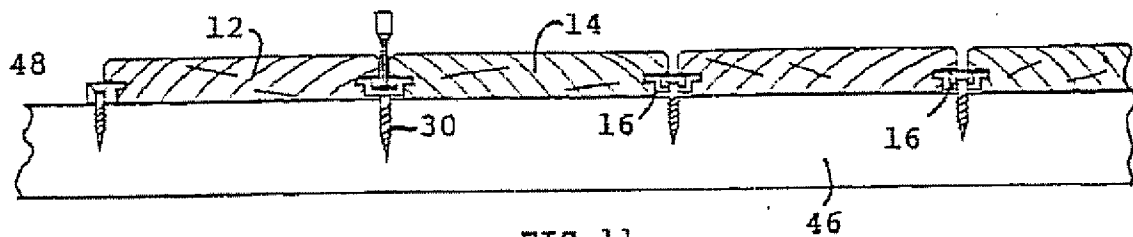


FIG 11

Faure requires an installer to first precisely fix all the fasteners 48 to the support 46 using the screws 30 (FIG. 7), *then* position a board 12 between two of the fasteners 48 (FIG. 8), and *then* finish fixing the fasteners 48 to the support 46 (FIG. 11). Should the installer misjudge the location of the fasteners 48 in the step of FIG. 7, it can be assumed that the installer must reposition all the fasteners 48 only after discovering the error in the step of FIG. 8. In contrast, and as recited in claim 46, embodiments of the present invention provide fasteners that may first be positioned against a board

and then fixed to a support such that it is not necessary to fix the location of the fasteners in advance.

Independent Claim 28

Independent claim 28, a system claim, has been amended herein to recite that the fastener bases define generally uniform gaps between the boards. As discussed on page 6, lines 20-33, of the specification, such a configuration enables a proper and uniform gap to be established between the boards regardless of the forces applied to the fastener during installation (as the fastener presents a generally solid base).

In contrast to these recited features, Faure's fastener does not provide any uniform gapping between boards. That is, the space between the upper lips of Faure's boards is set only by the screw and any resistance provided by the malleable fastener. Thus, the gap between each of Faure's boards will be set by how hard the installer pushes against the fastener when installing the boards. Faure, FIG. 12, is reproduced below for the Examiner's reference:

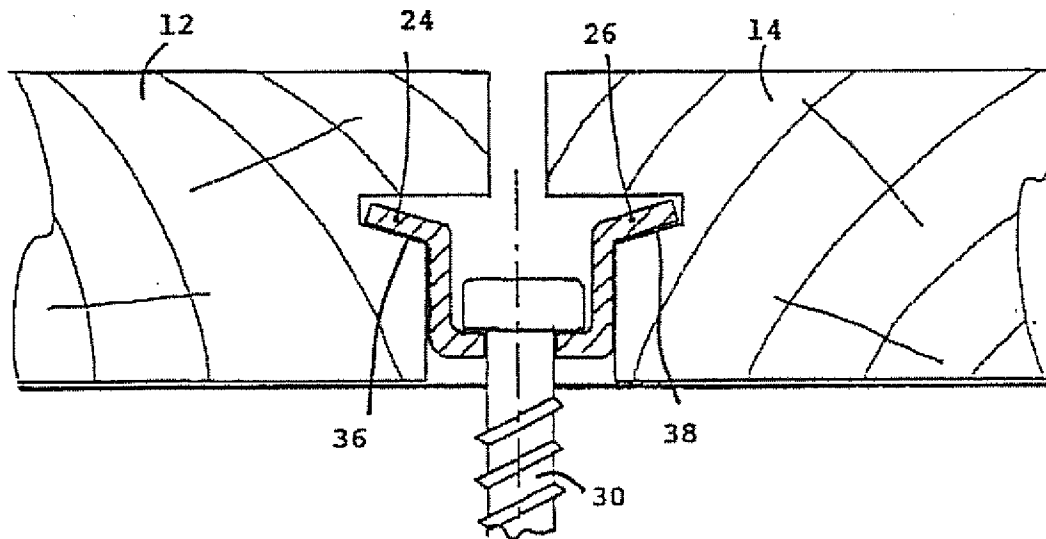


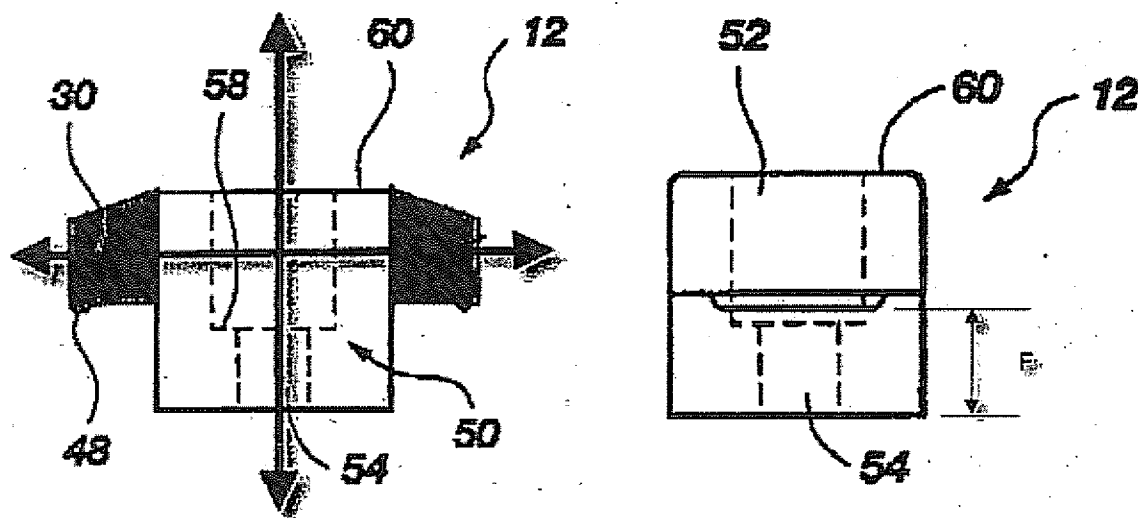
FIG. 12 (Faure)

Thus, although Faure's fasteners do define a gap between the boards (see col. 2, ll. 45-53), the provided gap is not necessarily uniform as its dimensions will depend on the extent to which the

fastener is deformed during installation. Further, Faure's use of only the bottom of the fastener base to define the gap further prevents the formation of a uniform gap as recited in claim 28 because the dimensions of the bottom portion of the fastener base and corresponding board portion are likely to be highly variable. In contrast, claim 28 now recites utilizing a waist portion of the fastener base—which mates to an easily measurable and controllable board surface area—to define a uniform gap.

Regarding the rejection of claim 28 in view of West, Applicant previously argued that claims 28-36 were allowable because they included the feature of a board having a lower lip thickness "E" and a fastener (20) having a protrusion (34) with a height "F", wherein "E" is at least 1% greater than F and F is specifically the "the average vertical distance from [a] base to the protrusion."

The Examiner equates West's nubs (48) with the claimed protrusions (34) to anticipate the independent claims (Office action, page 5). In particular, the Examiner contends that West, FIG. 5, shows the dimensions recited in claim 28:



*West (FIGS. 4-5) – As Annotated in the Office action*

The Examiner's citation and annotation of FIG. 5 is partially misleading. FIG. 5 is a side view of West's fastener. When viewed from the front, it is clear that West's nubs (the only portion

of West that can arguably meet some of the recited dimensions) comprise only a minuscule (i.e. not *average*) portion of West's protrusions as is clearly shown in FIG. 4.

Thus, Applicant respectfully submits that West does not disclose or suggest the dimensions recited in claim 28 as West's boards do not present a lower lip thickness that is at least 1% greater than the average vertical distance from the base to the protrusions.

#### New Dependent Claim 62

New dependent claim 62 recites that "the fasteners are operable to be rigidly coupled with the joists utilizing a fastening element and the gap between two of the boards is greater than the maximum lateral dimension of the fastening element." Thus, as illustrated in FIG. 3, the fastening elements may be inserted into the fasteners after the fasteners and boards are positioned to facilitate rapid installation of a decking surface. In contrast, Faure expressly requires the gap between the upper portion of its boards to be *smaller* than the maximum lateral dimension of its fastening element (*col. 2, ll. 58-63*):

The upper edges 40, 42 protrude out beyond the bottom edges 33, 35 so as to define a second gap 12 visible from outside and presenting a small thickness, allowing a tool to be inserted for tightening the screw 30. The second gap L2 is smaller than the first gap L1 and than the external diameter of the head 32 of the screw 30.

#### Conclusion

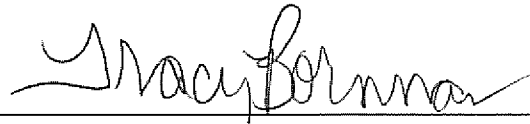
Applicant respectfully submits that all pending claims are now in allowable condition and requests a corresponding Notice of Allowance. In the event of further questions, the Examiner is urged to call the undersigned. Any additional fee which might be due in connection with this application should be applied against our Deposit Account No. 19-0522.

Application No. 10/634,499  
Amendment Dated July 10, 2007  
Reply to March 14, 2007, Office Action

Respectfully submitted,

HOVEY WILLIAMS LLP

BY:

A handwritten signature in black ink, appearing to read "Tracy Bornman", is written over a horizontal line.

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